OCT 6 1953
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 181

JENNIE DARGEL, ET AL.,
Petitioners,

vs.

WILLIAM G. BARR, DIRECTOR OF RENT STABILIZATION, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI IN THE UNITED STATES EMERGENCY COURT OF APPEALS.

REPLY TO MEMORANDUM SUGGESTING MOOTNESS AND MORE EVIDENCE THEREIN THAT THE ORS IS PARTISAN.

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THE DUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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ARGUMENT.

Respondent Barr suggests *Talbot* v. *Woods*, 164 F. 2d 493 (E. C. A. 1947) as authority for his contention that the question now before this Court is now moot. The case is not in point, for there the jurisdiction of the Emergency Court of Appeals had terminated prior to appeal thereto, there had been compliance with the orders and regulations issued under the Rent Act, and the purpose of the appeal was to seek return to the original status of the parties in respect to rental ceilings. The Court held that no "offense"

had been committed or shown to exist, and no "liability" or "right" was shown to exist to bring the case within the saving clause of the Housing and Rent Act of 1947, as amended, Section 204 (4) (Memorandum Suggesting Mootness—App. 7).

In this case the landlord respondent proceeded within five days after the Housing Expediter's decision of July 31, 1952 to bring forcible entry and detainers actions in the Chicago courts under and by virtue of the certificates of eviction. Judgment for possession was entered on September 5, 1953, forcing petitioners Clock, Dargel and Koch to vacate the premises. The landlord then was restrained from further evictions by order of the Emergency Court of Appeals until May 12, 1953, opinion date, after which the landlord then renewed proceedings in the Chicago courts and obtained judgment for possession against petitioner Giannakis effective May 28, 1953. Petitioner Giannakis thereafter vacated the premises.

The landlord obtained all these evictions in violation of Rent Procedural Regulation 3 (17 F. R. 6091) (Memorandum Suggesting Mootness—App. 10) with respect to each of these petitioners, and such violations created "rights" and "liabilities" in both petitioners and respondent landlord. Respondent Barr's statement (p. 4) that the certificates have been stayed since their issuance on May 13, 1952, and that petitioners were not evicted, is in error. The regulation, having the force of law, did stay the certificates from date of issuance to the present date, but the landlord prevailed upon the courts of Illinois to ignore the stay and proceeded to evict all the petitioners under and by virtue of the certificates with the exception of petitioner Corbin, who remains in possession. The Jackson-Corbin household has been constantly subjected to costly unlawful harassment. Said harassment has occasioned the death of two of the household: Earle R. Jack-

son, 83, died of heart trouble on August 2, 1952; Carrie Jackson, 88, died of heart trouble on September 29, 1953. Whether the landlord did or did not demonstrate good faith in obtaining the certificates in the first instance, the evictions were accomplished in violation of law, and the rights and liabilities that arose while the Rent Act was still in full force and effect and proper proceedings established under the Act were being had, clearly brings the case within the saving clause of the Act. The present necessity or non-necessity of the certificates does not determine mootness, for the rights and liabilities which bar mootness arose during application of the Rent Act to the Chicago Defense-Rental Area. The controversy still remains.

Moreover, the old laws are still in force in the defense rental areas and the abuse, which is the main target of the petition, still continues throughout said areas.

A ruling on the doctrine of good faith by this Court could do much to curb the worst and most notorious racket of rent control.

The constant abuse of federal law in the past should bar the violator from further acts of harassment until final adjudication.

MORE EVIDENCE THAT THE ORS IS PARTISAN.

The ORS in their answer brief made no attempt to reply to the charge of the petitioners that the ORS has been partisan but they give strong additional evidence of how true the charge is, not merely in the case 181 of the petitioners, but in general.

General Reasons Why the ORS Is Partisan.

The reason for this is the continued housing shortage. Blame for this is the most severe criticism that the ORS has had to meet. In consequence the ORS became partisan more and more in conversion cases. This tendency was by no means lessened by the fact that the remedy was more specious than real. (This remedy provided less living space than before on account of the partitions and hall. The lighting was inferior. The neighborhood was deteriorated. A real remedy would still more quickly have ended the life of the agency.) Mr. Morris A. Lieberman, Counsel for Region 6, told Corbin on May 15, 1952, two days after the Chicago ORS had granted certificates of eviction against the petitioners, that these certificates were being rushed through. In the various appeals to Washington, said he, this is a common situation: the tenants write letters; the landlord replys with three words "I deny everything". In such case, he added, unless the letters are in the form of affidavits, they will not even be read, and the certificates will be confirmed.

Two Dead.

Now, the character of those who are willing to engage in speculation in the eviction of longtime tenants is one somewhat of ruthlessness and greed. In the instant case, two are already dead, the deaths occasioned thereby. One was Earle R. Jackson, 83, died August 2, 1952, of heart trouble. The other was Carrie Jackson, 88, died September 29, 1953, same way. Incidentally, ruthlessness and greed are qualities that frequently do not grace the possessor with strict truthfulness or honesty: another reason why the ORS needs to be partisan in supporting them.

How the ORS Reply Brief Discloses Again That They Are Partisan.

The ORS begins their argument with the statement (page 4) that the issue is one of fact, not of law; that, in other words, the ORS and the petitioners are agreed upon the law. They said the same thing before the EmCA. But before the EmCA the law was one thing. Before this Court it is another. Before the ORS in Chicago, it was still a third. Under the Chicago interpretation of the law, it was impossible for the petitioners to win. Before the EmCA, the interpretation of law that the ORS managed to put across on the EmCA (R. 130-4) made the main contention of the petitioners worthless, no matter how true.

In the ORS reply brief or memorandum of mootness, the ORS quotes (page 3), with approximate correctness, the main contention of the petitioners. This is, in effect, the petitioners' statement of the law in the case. Since the ORS has already stated that there is no issue of law be-

tween themselves and the petitioners, they hereby agree that the law as exemplified in the main contention of the petitioners, is correct. In other words they agree that if the landlord uses the legal privilege to convert as a threat to obtain overcharges, give underservices and prevent complaint to the ORS, then the landlord is in bad faith and shall be barred from conversion.

The law in the case as stated by the petitioners, has been unchanged from the beginning. (See Pet. 6, 2nd para. from bottom and R. 89, top of page.)

Now the moment the ORS admits that our main contention, if true, proves bad faith in the landlord, our case becomes a practical certainty for it rests upon the OHE order of August 24, 1950 reducing rents, the Municipal Court contest ending October 19, 1950, the landlord's own affidavit and words of admission and things agreed upon by both sides.

That he obtained overcharges knowingly and wilfully and gave underservices the same way is proved absolutely from the record without the petitioners making a single assertion.

That landlord obtained the overcharges and underservices and prevented complaint by the threat to convert, is a conclusion that any disinterested jury would arrive at, even if the petitioners said nothing.

The only statements that the petitioners need make to explicitly complete the cycle of evidence against the landlord is to swear that said overcharges, underservices and prevention of complaint was obtained by threats to convert.

They have all so sworn. (R. 89.)

By evidence of which no assertion of any petitioner is any part, the landlord has been convicted of perjury.

Not one single untruth has been proved against the petitioners.

Respectfully submitted,

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APPENDIX A.

THE VARIOUS DOCTRINES OF GOOD FAITH.

In Chicago the doctrine of good faith required only that the landlord intended to convert, regardless of previous conduct.

Before the EmCA the doctrine of good faith was, that the intent to convert, besides being real, must not have as main motive the desire to evict in retaliation for rights demanded by tenants. (R. 130-4) This doctrine was copied exactly from the ORS brief, which petitioners did not see till too late. Three copies were mailed to them, in succession. Only one, the last, which was registered, arrived. By this time the EmCA Opinion of May 12 (R. 130) had been already printed.

From the oral statement of the ORS before the EmCA, that the issue between us was one of fact, not of law, the petitioners were deceived into thinking that they agreed with the ORS on the applicable law, and said so orally before the EmCA.

The ORS then went on to say that the whole matter was one of credibility and they had decided for the landlord; that it was their function to determine who was telling the truth; that they had had to speculate and guess from the nature of the case, but they had done the best they could under the circumstances.

Now the EmCA deduced their applicable doctrine of good faith from Housing Rent Regulation 1, Section 193, reasoning from the words "good faith" therein.

They deduced that the intent to convert was not in good faith if the main purpose was to evict in retaliation. (R. 130-4.)

Still more logically the EmCA could have deduced that the intent to convert should not be used as a threat for levying blackmail for certainly a swindle ending in eviction is worse than an eviction in anger. And the sound legal maxim that the abuse of a legal privilege bars the violator from its lawful use, applies here.

However, the petitioners were deceived into thinking that the applicable law as applied by the EmCA would be the same as they believed it to be and consequently the EmCA (this was their first case of this kind) stated the law to be what both contestants seemed to agree it was.

Under this interpretation of law it would have been extremely difficult for the petitioners to win.

The applicable law of good faith as now agreed between both contestants before the Supreme Court, as stated and used by Morris A. Lieberman in the past, can be stated briefly in three sentences: (1) The intent to convert must be real. (2) The main motive must not be retaliation. (3) It must not be used as a threat previous to conversion to levy blackmail.

This doctrine has been variously deduced from Housing Rent Regulation No. 1, Section 193. The Housing and Rent Act of 1947, section 206h, and the legal maxim that the abuse of a legal privilege shall bar the violator from its lawful use.

The ORS strategy before the EmCA was to say both sides agreed on the law; that it was their function to judge facts, and on credibility they decided against the petitioners.

What the petitioners accuse the ORS of doing is the narrowing of the law of good faith to fit the occasion so that the tenants will be sure to lose.

One clear authoritative statement from the Supreme Court on this subject would do much to curb the racket at which this cause is aimed.

APPENDIX B.

IN THE APPELLATE COURT OF ILLINOIS
First District

December Term, A. D. 1952.

HAROLD H. ELFENBEIN, *Plaintiff,* *vs.* MR. DIONYSIOS GIANNAKAS also known as DENNIS GINNAKIS, *Defendant.*	Appeal from the Municipal Court of the City of Chicago. Honorable Eugene J. Holland, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT.

STATEMENT OF THE CASE.

This is an appeal from an order of possession granted Plaintiff against Defendant in an action of forcible entry and detainer.

On May 13, 1952, the local office of Rent Stabilization issued a certificate of eviction against Defendant in favor of Plaintiff. Defendant appealed to the Rent Director, Office of Rent Stabilization, and said appeal was denied on the 31st day of July, 1952.

On August 5, 1952, an action in forcible entry and detainer was commenced in the Municipal Court of Chicago for possession of Defendant's apartment. Defendant filed a special appearance, not buttressed by any motion

or affidavit in support of such special appearance. The trial court held that, inasmuch as a special appearance was filed without a motion and/or affidavit, the special appearance became a general appearance and that the trial court had jurisdiction over the subject matter. Defendant did not contest the validity of the termination-of-tenancy notice nor the validity of the service of process.

Defendant, in oral support of his special appearance, claimed the trial court was without jurisdiction to hear this case for the following reasons:

1. Rent Procedural Regulation 2, dated November 21, 1951, and Rent Procedural Regulation 3, dated July 1, 1952, promulgated by the Director of Rent Stabilization, which Regulations are incorporated by reference herein and made part hereof, and, more particularly, Section 26 of said Regulation 2 read as follows:

> "Sec. 26. *Stay of Certificates relating to eviction.* Where a tenant files an appeal from an order with respect to a certificate relating to his eviction within twenty (20) days after date of its issuance, the certificate shall be stayed until ten (10) days after determination of the appeal: *Provided, however,* That the waiting period, if any, provided by the certificate shall not be tolled by the stay and that the termination or expiration of a stay shall not operate to curtail such waiting period: *And provided, further,* That where the tenant's appeal or objections are dilatory, frivolous, or not made in good faith, the stay of the certificate may be terminated."

Rent Regulation 3, Section 26b and Rent Regulation 2, Section 26 both provide stays after adjudication. The difference is that Rent Regulation 2 provides a stay of only 10 days, whereas Rent Regulation 3, Section 26b provides a stay of 30 days after denial by the ORS in Washington. This is by inference from the Defense Produc-

tion Act Amendments of 1952, Public Law 429, Section 408a.

2. Defendant filed suit in the Federal District Court of Columbia on August 11, 1952, against Tighe E. Woods, Civil Action Number 3566-'52, asking for a mandatory injunction and for review of the order of the Director of Rent Stabilization dated 31st of July, 1952, said order denying Defendant's appeal. No motion for a temporary injunction or other relief had been made in this cause.

3. Defendant filed another suit asking for the same relief in the United States Emergency Court of Appeals on August 30, 1952, and given the number 611 in said court. The filing of this suit was based on Rent Procedural Regulation 3, dated July 1, 1952, issued by the Director of Rent Stabilization, incorporated by reference herein and made part hereof, and, more specifically, Section 26(b) of said Regulation, which reads as follows:

> "(b) If the tenant files a complaint against the order in the United States Emergency Court of Appeals in accordance with law, the certificate shall be deemed suspended until entry of the final judgment of that Court and for a period of thirty (30) days thereafter. If within that period the tenant files a petition for *certiorari* to review such judgment in the Supreme Court of the United States, the certificate shall be deemed suspended until ultimate disposition of the proceeding. Where, pursuant to a judgment of that Court or of the Emergency Court of Appeals the proceeding is remanded to the Director, the certificate shall remain suspended during the further proceedings before the Director."

That this filing was done according to law is established by the Defense Production Act Amendments of 1952, Public Law 429, Section 408a.

(That said filing was according to law was affirmed,

again in the Em C A opinion printed Dec. 17, 1952 (R. 115).)

The trial court denied all of Defendant's contentions of the law and entered judgment for Plaintiff.

Errors Relied Upon for Reversal.

The Trial Court erred:

1. In entering judgment for the Plaintiff.

2. The Trial Court erred in not finding the issues against the Plaintiff because of his failure to comply with the Rent Regulations promulgated by the Office of Rent Stabilization.

3. The Trial Court erred because it gave no legal efficacy to the Rent Regulations promulgated by the Office of Rent Stabilization.

4. The Trial Court erred in granting a verdict for Plaintiff in that it did not have any jurisdiction over the subject matter to grant such judgment.

5. The Trial Court erred in that the Complaint was not dismissed for reason of lack of jurisdiction over the subject matter.

6. The Trial Court erred in that it ignored two pending appeals, one in the Federal District Court of District of Columbia, and one in the United States Emergency Court of Appeals.

POINTS AND AUTHORITIES.

I.

The filing of a special appearance, not buttressed by a motion or affidavit, does not constitute a general appearance in a forcible entry and detainer case.

Rule 14, Paragraph 2, Rules of Municipal Court.
Section 48, Par. (4) Civil Practice Act as set forth in Smith-Hurd Annotated Statutes, Chap. 110, Section 172.

II.

A defendant even by a general or voluntary appearance does not confer jurisdiction of the subject matter or waive the lack thereof.

Rent Procedural Regulation 2, promulgated by Director of Rent Stabilization, Nov. 21, 1951 (published in Federal Register).

Rent Procedural Regulation 3, promulgated by Director of Rent Stabilization, July 1, 1952 (published in Federal Register).

Gill v. *Lynch,* 367 Ill. 203, 10 NE (2) 812.

People ex rel. Carlstrom v. *Shurtleff,* 355 Ill. 210, 189 NE 291.

Hawkins v. *Hawkins,* 350 Ill. 227, 183 NE 9.

McGarry v. *Village of Wilmette,* 303 Ill. 147, 135 NE 96.

Litzelman v. *Town of Fox,* 285 Ill. App. 7, 1 NE (2) 915.

Village of Glencoe v. *Industrial Commission,* 354 Ill. 190, 188 NE 329.

Town of Kingston v. *Anderson*, 300 Ill. 577, 133 NE 347.

Eggleston v. *Royal Trust Co.*, 192 Ill. 101, 61 NE 423.

III.

Federal regulations pertaining to landlord and tenant must be strictly complied with before the local courts assume jurisdiction over the subject matter.

Rent Procedural Regulations 2 and 3 (published in Federal Register).

West Town Real Estate Corp. v. *Willett*, 331 App. 109, 72 NE (2) 449.

222 East Chestnut St. Corp. v. *Murphy*, 325 Ill. App. 392, 60 NE (2) 450.

Jageman v. *McMahan*, 331 Ill. App. 10, 72 NE (2) 449.

Hussos v. *Vasel*, 346 Ill. App. 12.

Robinson v. *Robinson*, 329 Ill. App. 515, 69 NE (2) 904.

City of Chicago v. *Chicago Steamship Lines, Inc.*, 328 Ill. 309, 159 NE 301.

ARGUMENT.

I.

The filing of a special appearance, not buttressed by a motion or affidavit, does not constitute a general appearance in a forcible entry and detainer case.

Paragraph (2) of Rule 14 of the Rules of the Municipal Court of Chicago, as set out in the Municipal Court Manual, reads as follows:

> "Provided, however, in an action of forcible entry and detainer, or in any action for the recovery of money or the value of the personal property sought to be recovered does not exceed $200.00, the defendant need not file any defense unless ordered by the court to do so; and when in any such case no defense is ordered, the allegations of the plaintiff's statement of claim will be deemed denied, and any affirmative defense may be proved as if it were specifically pleaded."

The Civil Practice Act, Sec. 48, par. (4), as set forth in Smith-Hurd Annotated Statutes, Chap. 110, Sec. 172, reads as follows:

> "Sec. 48, Par. (4) The raising of the defense that the court has no jurisdiction of the subject matter of the action or suit can be raised by answer as well as by motion, and a failure to raise such defense by motion shall not prejudice raising it by answer."

In the case at bar, the trial court ruled that a special appearance as was filed in this matter for defendant but was not buttressed by a motion or affidavit became a general appearance, and defendant gave the trial court jurisdiction over the subject matter. This ruling is clearly inconsistent with the rules of the Municipal Court and the Civil Practice Act as set out above.

If one can raise jurisdictional matters at any time, even by answer, *a fortiori* one can do so by the mere filing of a special appearance in a forcible entry and detainer matter.

II.

A defendant even by a general or voluntary appearance does not confer jurisdiction of the subject matter or waive the lack thereof.

Even construing the appearance of the defendant to be a general one, the trial court did not have jurisdiction of the subject matter because under Rent Procedural Regulation 2, promulgated by the Director of Rent Stabilization on November 21, 1951 (published in Federal Register), Section 26 reads as follows:

> "Where a tenant files an appeal from an order with respect to a certificate relating to his eviction within 20 days after its issuance, the certificate shall be stayed until 10 days after determination of the appeal: Provided, however, that the waiting period, if any, provided by the certificate shall not be tolled by the stay and that the termination or expiration of a stay shall not operate to curtail such waiting period."

Rent Procedural Regulation 3, Section 26, promulgated on July 1, 1952, as published in the Federal Register, is the same in essence as Regulation 2 as set forth above, with the exception that it provides for a thirty-(30-)day stay instead of a ten-(10-)day stay.

In the instant case the appeal of defendant was denied by the Rent Director on the 31st day of July, 1952, and appellee filed suit on August 5, 1952. It is, therefore, obvious that under Rent Procedural Regulation 2, the ten days had not elapsed and that, therefore, the trial court did not have jurisdiction over the subject matter.

The legal doctrine is well settled that the acts and proceedings of a court which is without jurisdiction in the particular case, or is acting in excess of its jurisdiction, are void.

Gill v. *Lynch,* 367 Ill. 203, 10 NE (2) 812.
People ex rel. Carlstrom v. *Shurtleff,* 355 Ill. 210, 189 NE 291.
Hawkins v. *Hawkins,* 350 Ill. 227, 183 NE 9.
McGarry v. *Village of Wilmette,* 303 Ill. 147, 135 NE 96.
Litzelman v. *Town of Fox,* 285 Ill. App. 7, 1 NE (2) 915.

It is a well-settled general rule that a defendant by a general or voluntary appearance does not confer jurisdiction of the subject matter or waive the lack thereof.

Village of Glencoe v. *Industrial Commission,* 354 Ill. 190, 188 NE 329.
Town of Kingston v. *Anderson,* 300 Ill. 577, 133 NE 347.
Eggleston v. *Royal Trust Co.,* 192 Ill. 101, 61 NE 423.

III.

Federal regulations pertaining to landlord and tenant must be strictly complied with before the local courts assume jurisdiction over the subject matter.

In the instant case, the Defendant filed suit in the Federal District Court of Columbia on August 11, 1952, against Tighe E. Woods, Director of Rent Stabilization, Civil Action Number 3566-'52, asking for a mandatory injunction and for a review of the order of the Director of Rent Stabilization dated the 31st day of July, 1952, which order

denied Defendant's appeal to revoke the certificate of eviction issued by the Office of Rent Stabilization.

Defendant, to further protect his rights, filed another suit, asking for the same relief, in the United States Emergency Court of Appeals on August 30, 1952, said case being given the number 611 in the United States Emergency Court of Appeals. The filing of this suit was based on Rent Procedural Regulation 3 dated July 1, 1952, issued by the Director of Rent Stabilization and published in the Federal Register and, more specifically, Section 26(b) of said Regulation, which reads as follows:

> "Sec. 26 (b) If the tenant files a complaint against the order in the United States Emergency Court of Appeals in accordance with law, the certificate shall be deemed suspended until entry of the final judgment of that Court and for a period of thirty (30) days thereafter. If within that period the tenant files a petition for certiorari to review such judgment in the Supreme Court of the United States, the certificate shall be deemed suspended until ultimate disposition of the proceeding. Where, pursuant to a judgment of that Court or of the Emergency Court of Appeals the proceeding is remanded to the Director, the certificate shall remain suspended during the further proceedings before the Director."

It is submitted that the Defendant filed his appeal within the thirty-(30-)day limit as set forth in Rent Procedural Regulation 3 and, therefore, should have been afforded the protection of Section 26 (b) of the Rent Procedural Regulation 3, which, in essence, suspended the certificate of eviction and withheld jurisdiction from the trial court.

The court should take judicial notice of rent regulations for housing issued under the Federal Rent Control Act which was reported in the Federal Register.

222 East Chestnut St. Corp. v. *Murphy,* 325 Ill. App. 392, 60 NE (2) 450.

Since rent regulations adopted under provision of Emergency Price Control Act are reported in the Federal Register, Appellate Court would take judicial notice of it, and landlord must comply with all federal regulations.

Jageman v. *McMahan*, 331 Ill. App. 10, 72 NE (2) 449.

In the case of *Hussos* v. *Vasel*, 346 Ill. App. 12, decided by the Appellate Court of First District on January 30, 1952, this honorable court recognized the Federal Rent Control Regulations as superseding local law in an action of forcible entry and detainer.

Proof of compliance by landlord with sections 6 (d)(1) and 6(d)(2) of OPA Rent Regulations, requiring copy of eviction notice as well as written notice as to commencement of action to be given to Area Rent Office, was indispensable to maintenance of forcible detainer action to recover possession of leased premises for alleged breach of covenants in lease respecting occupancy by persons other than lessee, and Appellate Court would affirm judgment against landlord where record failed to show such compliance, even though landlord's brief contained statement that he had complied with such requirements.

West Town Real Estate Corp. v. *Willett*, 331 App. 109, 72 NE (2) 449.

Conclusion.

The fact that landlords and tenants in cases similar to the instant one are controlled by the Federal Rent Control Act has been clearly established by our courts to the extent that compliance with the Federal Rules and Regulations is a condition precedent and jurisdictional to bringing suit for possession.

The forcible entry and detainer statute is a special statu-

tory proceeding, summary in its nature, and in derogation of common law, and the statute must be strictly followed.

Robinson v. *Robinson*, 329 Ill. App. 515, 69 NE (2) 904.

City of Chicago v. *Chicago Steamship Lines, Inc.*, 328 Ill. 309, 159 NE 301.

It is submitted that the Federal Rent Control Laws, Rules and Regulations have become merged with our local forcible entry and detainer Statute, and that such Federal Laws, Rules and Regulations must also be strictly followed.

We respectfully submit that error was committed by the trial court inasmuch as it refused to be bound by these paramount rules and regulations.

We respectfully urge this Honorable Court that the judgment of the Municipal Court of the City of Chicago should, therefore, be reversed.

Respectfully submitted,

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PETITION FOR REHEARING.

1.

REASONS FROM THE RULE BOOK FOR GRANTING OUR PETITION.

"A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered."

This quotation introduces Section 5 of Rule 38 of the Rule Book of this Court. In the discussion that follows

there is implicit that this Court governs its actions in the public interest, as do all bodies politic.

Reasons for granting our petition that would deserve consideration and which, we claim, are applicable to our case, occur in paragraphs (b) and (c).

We quote. The numbering and paragraphing is ours.

1. "Where a * * * Court of Appeals * * * has decided an important question of local law in a way probably in conflict with applicable local decisions."

2. "Or has decided an important question of federal law which has not been, but should be, settled by this court."

3. "Or has so far departed from the usual course of judicial proceedings, *or so far sanctioned such a departure by a lower court,* as to call for an exercise of this court's power of supervision."

4. "Where the Court of Appeals has decided a question of general importance * * * which has not been, but should be, decided by this court."

Replace in (1) the words "local law" by "federal law as locally applied" and in (3) the words "lower court" by "ORS" and in (1) and (4) the court of appeal named, by the "United States Emergency Court of Appeals (EmCA)." This does not depart from the spirit of the rule and it makes all four quotations directly applicable to our case.

THE QUESTION OF IMPORTANCE.

We consider first the question of importance. The abuse complained of has been nationwide and is still widespread in defense rental areas, a domain sufficiently widespread to merit the attention of this Court. Moreover, elsewhere the abuse is only dormant and may well come to life again after that war comes which history says always follows an armament race.

Further importance is given to this issue by the two basic constitutional rights involved: one; the right to life, liberty and the pursuit of happiness and the other; the fundamental right of a man to enjoy the fruit of his own efforts, or, to quote the fable, the industrious ant has no obligation to divide with the frivolous grasshopper.

Another important evil that could be much lessened by this Court is the temptation to swindle promoted by the privilege to convert, by the partisanship of the ORS for conversion, by the defying by some judges of Reg. 3, Section 26(b), and by the desire of tenants to continue their tenancy. These things make swindling safe and easy and tempt to a moral degeneration that outweighs the very doubtful advantage to the public of conversions by people corrupted by these temptations.

NO CONSTITUTIONAL RIGHT OF THE LANDLORD HAS BEEN INFRINGED UPON.

The feeling of some landlords that they are in the position of the ant dividing with the grasshopper, is erroneous. Congress recognized when they created the OHE that all rental property had at that time two values (still has), one that belongs absolutely to the owner, and a second value, put there by war scarcity: men drafted to war and restrictions on materials. This second value was put there by all the people and the OHE was created to keep the landlords from profiteering upon it.

We submit, therefore, that no fundamental rights of the respondent landlord are here at stake, as the war scarcity value of his property is alone involved. On the contrary, in converting, he is using the war scarcity or gift value of his property to deteriorate the fundamental or absolute property rights of his neighbors.

On the other hand, the fundamental right to life, liberty and the pursuit of happiness, was heavily infringed upon by war necessity. The men drafted had their careers interfered with, their liberty suspended, their homes, their health, their very lives endangered. In contrast the OHE guaranteed that 20% of the gross income of rental property should be net profit. This allowed for all costs, including taxes. Moreover that guarantee was made good by that very same gift value aforementioned, war scarcity.

This argument that no constitutional right of the landlord has been infringed upon, may be in the nature of a defense where no one accuses. It grew out of the words and acts of Judge Schaeffer of the Illinois Supreme Court, who sat thru the vacation period.

Petitioner Giannakis had been before the Municipal Court, the Ill. Appellate Court, 3rd division, and last before Judge Schaeffer to get him to stay the mandate. The Municipal Judge had imposed a $450 appeal bond. The Appellate Judges had increased this bond by $1000, and in order to stay the mandate, Judge Schaeffer required an additional $10,000 bond. All of these bonds were imposed in defiance of Regulation 3, Section 26(b). In no case were the merits of the litigation either presented or argued. The $10,000 bond was too much additional damage to the business of Giannakis and so he traded his appeal to the Ill. Supreme Court for time to find another apartment. Judge Schaeffer negotiated the trade. Judge Schaeffer told petitioner, Corbin, at the time, that he knew how the U. S. Supreme Court thought, intimating that said Court agreed with him. The petitioners inferred from this that Federal Rent Regulation 3, Section 26(b), published in the Federal Register, was, in the mind of Judge Schaeffer, either unconstitutional or not lawful.

SHOWING HOW WIDESPREAD HAS BEEN THE INSTINCT TO MISUSE THE PRIVILEGE TO CONVERT.

"The only real control that a landlord has over a tenant is the privilege to convert."

"I can evict anyone I want by cutting up his apartment."

Such statements as above quoted and similar ones are in the experience of everyone who has any interest in landlord and tenant disagreements. This includes almost the entire adult population of this country, including the Honorable Judges of this Court. Comparatively few, of course, make use of the above ideas, but their existence is hardly a secret from anyone.

AN AUTHORITATIVE DEFINITION OF GOOD FAITH IS BADLY NEEDED.

An authoritative definition of good faith is badly needed for the following reasons:

Note the interpretation of good faith given by the EmCA (R. 130-4) and note on pages 8 and 9 of the petition how badly it applies to such cases as ours: how it can be made to uphold either the right or the wrong.

Note the case quoted by the EmCA in the record (R. 131-5) and the statement of the judge "without attempting a definition of good faith" * * *.

Note the word CONFIDENTIAL printed in the upper left hand corner of Appendix A in the petition, showing the attitude of secrecy with regard to issue of good faith as there partly explained, at the time when it was published.

Note that Norman R. Liebling, one of our attorneys, spent three days in Washington trying to get from the ORS their interpretation of the doctrine of good faith as applicable in conversion cases, and could not get it.

Note that at the time of our hearing in Chicago, the ORS

doctrine of good faith was that he must really intend to convert: that before the EmCA, the doctrine of good faith was that conversion must be really intended and the motive must not be revenge (R. 130-4) and that before this Court the doctrine as presented by us and accepted by the ORS in their Suggestion of Mootness, is that conversion must be really intended, it must not be done for revenge. And the threat to convert must not have been used previously to collect overcharges, give underservices or prevent complaint. The narrower doctrine accepted by the EmCA was that expounded to them by the ORS.

Evidently for the sake of the rule of law and not of men, an authoritative statement of the doctrine of good faith is badly needed. It would do much to stop the abuse complained of.

A statement that Federal Rent Regulation 3, Section 29 (b) is the law would also help curb the abuse.

CONCLUSION.

Indications are plain herein why the four quotations from the Rule book are applicable.

Respectfully submitted,

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SUPPLEMENTARY STATEMENTS.

The four reasons from the rule book that would deserve consideration in granting our petition, considered one at a time.

1. "WHERE A * * * COURT OF APPEALS * * * HAS DECIDED AN IMPORTANT QUESTION OF LOCAL LAW IN A WAY PROBABLY IN CONFLICT WITH APPLICABLE LOCAL DECISIONS."

Certainly it is improbable that the local application of federal law, as applied in Chicago, was in harmony with the law as expounded by the EmCA, for otherwise the arguments of the experienced Chicago lawyers of the petitioners, were absurdities that had no bearing on the real issue, as the following will demonstrate.

Read the applicable law as expounded by the EmCA (R. 130, 4): the EmCA's version of the grievances of the tenants and the landlord's defense thereto (R. 131, 5; R. 132, 6).

Note: that based on the applicable law here expounded, the landlord could have said: "The grievances here stated are all true and my defense against them all lies. Moreover, I admit that several times I was good and angry. But I was at no time angry enough to spend $18,000 to get even. I could not afford any such luxury. My main motive in conversion is profit. I may be a liar, but certainly common sense will sustain me in this. Therefore, since I really intend to convert and since my main motive is profit, not anger, I have sought the certificates of eviction in good faith, and am entitled to them, according to the law as expounded by the EmCA. For according to the applicable law as here expounded, the fact that I

abused the legal privilege to convert by using it as a tool for blackmail for collecting overcharges, giving underservices, preventing complaint to the ORS, and other infringements of rights, have no bearing on my right to convert or the question of good faith."

How inequitable this doctrine of good faith as applied to conversions, is, is plainly shown on pages 8 and 9 of the Petition.

Moreover, note: that when the EmCA decided against the Petitioners, their decision was not that the Petitioners were untruthful, but that their arguments were irrelevant. This is the plain inference to be drawn from pages 130, 4; 131, 5; and 132, 6, of the Record.

The EmCA had accepted the doctrine of good faith presented to them by the ORS to fit the occasion, a matter in which the Petitioners had acquiesced through misapprehension, as explained elsewhere.

Note also, that when the threat to convert as a tool for fraud, is added to the definition of bad faith, the above suppositious argument of the landlord becomes worthless.

The doctrine of good faith, as was the practice in Chicago for years under Mr. Moses and Mr. Morris A. Lieberman, general counsel of Region 6, was the doctrine upon which the Petitioners' argument rested. It is the doctrine expounded in our Petition and accepted by the ORS before this Honorable Court.

2. "Or Has Decided an Important Question of Federal Law Which Has Not Been, But Should Be, Settled By This Court."

There is no one thing that would go so far to curb the abuse which has been nationwide and which is still widespread, as an authoritative statement from this Honorable

Court as to what is the doctrine of good faith in the matter of conversions. Certainly this Court is the only one that can correct the erroneous interpretation given by the EmCA, and the multiple interpretations given by the ORS to fit the occasion.

3. "Or Has So Far Departed From the Usual Course of Judicial Proceedings, or So Far Sanctioned Such a Departure By a Lower Court as to call for an exercise of this Court's power of supervision."

Now a fraud based on the legal privilege to convert as a threat, is surely a worse abuse of said privilege than an eviction in anger based on the same privilege, and therefore an opinion that calls such eviction bad faith and ignores the fraud, is faulty. The EmCA had departed from what had been usual practice due, perhaps, from lack of knowledge of such cases. Certainly they could not get such knowledge from the ORS whom they had accused, in their Opinion of December 17, 1952 (R. 115), of legislating rather than interpreting in claiming that the Petitioners were not lawfully filed in their Court. The Petitioners did not know the interpretation of the EmCA until after they read it in their final Opinion (R. 127). They had been misled by the ORS into thinking that everyone was in harmony on the law. Consequently, before the EmCA, the question of law was never raised.

4. "Where the Court of Appeals Has Decided a Question of General Importance * * * Which Has Not Been, But Should Be, Decided By This Court."

The doctrine of good faith has been decided wrongly by the EmCA, we claim. Said decision would foster the abuse complained of, not curb it. Surely its importance is suffi-

ciently general as to merit an authoritative decision by this Honorable Court.

Respectfully submitted,

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